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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,859	05/29/2002	Seishi Kato	2002-0400 A	6799
513	7590	10/11/2005	EXAMINER	
WENDEROTH, LIND & PONACK, L.L.P.			SCHWADRON, RONALD B	
2033 K STREET N. W.			ART UNIT	
SUITE 800			PAPER NUMBER	
WASHINGTON, DC 20006-1021			1644	

DATE MAILED: 10/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/088,859

Applicant(s)

KATO ET AL.

Examiner

Ron Schwadron, Ph.D.

Art Unit

1644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. ____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

1. The certified copies of the Japanese priority documents have not been received.
2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 3 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Yokoyama-Kobayashi et al.

Yokoyama-Kobayashi et al. teach the claimed vector (see Figure 1(b) for a description of the peptide encoded by the vector and pages 162, sections 2.2,2.3 and page 163, section 3.2 for a description of said vector).

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scholler et al. (US 2003/0008342) in view of Yokoyama-Kobayashi et al. Scholler et al. disclose immunization with vectors that induce antibodies wherein the vectors can encode a fusion protein with an artificially added transmembrane domain

(see abstract, [0022], [0053]-[0055] and [0087], [0115]). The antibody response is measured in an in vitro assay wherein the sample would be isolated and purified prior to or during the assay (see [0034] and [0142]). Scholler et al. do not disclose use of the vector recited in the claims using SEQ ID NO. 2 or that the antigenic protein is fused with the c terminal of a transmembrane domain. Yokoyama-Kobayashi et al. teach the claimed vector (see Figure 1(b) for a description of the peptide encoded by the vector and pages 162, sections 2.2,2.3 and page 163, section 3.2 for a description of said vector). Said vector encodes a fusion protein containing an artificially added transmembrane domain wherein a protein is fused c-terminal to said transmembrane domain (see abstract). Yokoyama-Kobayashi et al. disclose that said vector can be used to produce a fusion protein that can be used to anchor a secreted molecule to the cell surface (see abstract). It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to have created the claimed invention because Scholler et al. disclose immunization with vectors that induce antibodies wherein the vectors can encode a fusion protein with an artificially added transmembrane domain whilst Yokoyama-Kobayashi et al. teach a vector that encodes a fusion protein containing an artificially added transmembrane domain wherein a protein is fused c-terminal to said transmembrane domain.

6. No claim is allowed.


7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ron Schwadron, Ph.D. whose telephone number is 571 272-0851. The examiner can normally be reached on Monday-Thursday 7:30-6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on 571 272-0841. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1644

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ron Schwadron, Ph.D.
Primary Examiner
Art Unit 164


RONALD B. SCHWADRON
PRIMARY EXAMINER
GROUP 1800 *U.S. 1644*